REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on 03/02/2009, and the references cited therewith. Claims 16, 23, 24, 31, 32, 34 are amended. Claims 16-39 are now pending in this application.

Information Disclosure Statement

Applicant submitted an Information Disclosure Statement and a 1449 Form on 08/06/2002, and Supplemental Information Disclosure Statements and a 1449 Forms on 06/27/2005, 07/20/2005, and 11/01/2007. Applicant respectfully requests that initialed copies of the 1449 Forms be returned to Applicants' Representatives to indicate that the cited references have been considered by the Examiner.

Examiner's Response to Arguments Section

The Examiner asserts that Applicant has not challenged certain facts and that those facts are considered admitted prior art. Applicant denies that the cited facts are prior art, and submits that the Examiner has no legal basis for this assertion. An Examiner cannot deem facts as admitted prior art unless an Applicant has explicitly admitted that such facts are prior art.[1] Furthermore, the law does not require Applicant to refute all assertions made during prosecution. During prosecution, the Examiner must establish a *prima facie* case of unpatentability, such as by asserting that a single prior art reference teaches all elements of a rejected claim[2]. To rebut this assertion, Applicant need only show that one element is missing from the prior art or otherwise show one element of the *prima facie* case is lacking.

[1] See MPEP 2129.
[2] See 35 USC §102 and MPEP 2132 *et seq.*

§112 Rejection of the Claims

Claims 16-39 are rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 recites:

> receiving at least one response from the user computer, the at least one response including a first computer fingerprint file and a first identification for the user generated using the first computer fingerprint file, said first computer fingerprint file including at least one identifying characteristic of the user computer;

The Office Action asserts, "there is no corresponding step of generation, it is therefore unclear how the identification is obtained." Applicant disagrees, and submits that claim 16 is not indefinite. In claim 16, the first identification is obtained via receipt, from the user computer, of a response that includes *inter alia* the first identification for the user. Claim 16 further describes the "response" by indicating that the response's first identification was generated using the fingerprint file. Applicant need not add a "generating" operation, as the claim language is unambiguous. One of ordinary skill in the art would understand claim 16, as it is written.

Claims 34-38 include language similar to that discussed above. Thus, Applicant submits claims 34-38 are not indefinite and allowable for at least the same reasons as discussed above.

§103 Rejection of the Claims

Claims 16-39 are rejected under 35 USC §103(a) as being unpatentable over Padgett et al (US Patent 6,167,518) in view of Archibald et al. (US Patent 5,825,883) and further in view of Klein (US Patent 6,857,076). Applicant submits that the rejected claims are patentable over the cited references because the cited references do not teach or suggest all elements of each rejected claim. Padgett, Archibald, and Klein are a hodgepodge of technical elements whose relationship to each other and the claims is tenuous. In the following discussion, Applicant will summarize the cited references and explain how the references do not teach or suggest all elements of each rejected claim. The following bullet points summarize each of the cited references:

- Padgett - Padgett describes a system for distributing digital certificates for use in authenticating documents. Padgett's digital certificates include digitized biological data (i.e., digitized chromosomal DNA) unique to particular users. If there is doubt about whether a given user transmitted a certificate-bearing message, Padgett's system can compare the user's biological data with the biological data in the certificate.[3]
- Archibald – Archibald's system tracks program usage on remote computers. Archibald's system includes one or more computers located remotely from a meter module. The meter module tracks use of software programs on the computers. The meter module includes a meter data file including the following information for tracking program usage on the computers: authority IDs that indentify publishers of the programs, user IDs that identify computers and user accounts, and consumption IDs that identify particular usage of the programs. When a computer launches a program, the computer sends application information about the program usage to the meter module. The application information includes an application identifier identifying the program, publisher

[3] See Padgett's Summary of the Invention at columns 2 & 3.

code identifying the program publisher, and an encryption key. After the meter module receives the application information, the meter module generates usage information that is used in a process for collecting money for the program usage.

- Klein – Klein describes methods for encrypting data on a computer's storage device, such as a hard disk drive. Klein's methods call for creating an encryption key based on a hardware identification code, and in some cases, user input. After generating the key, all data stored locally on the computer's hard disk drive (or other media device) is encrypted using the encryption key.

This Response will now discuss how the cited art does not teach or suggest all elements of the rejected claims. Claim 16 recites:

> receiving at least one response from the user computer, the at least one response including a first computer fingerprint file and a first identification for the user generated using the first computer fingerprint file, said first computer fingerprint file including at least one identifying characteristic of at least one hardware component of the user computer;
> comparing the first computer fingerprint file, which includes at least one identifying characteristic of at least one hardware component of the user computer, against a second computer fingerprint file, to verify the user computer, the second computer fingerprint file accessible by the verification computer, said second computer fingerprint file including at least one identifying characteristic of at least one hardware component of the a user computer;

In rejecting claim 16, the Office Action asserts that Archibald discloses claim 16's receiving a first fingerprint file and first identification for a user. The Office Action relies on Archibald's Figures 2 & 16 and its passage at column 6, line 36 to support this rejection. Applicant submits the Office Action has mischaracterized Archibald. Neither Archibald's user computer nor its meter module receive a fingerprint file that identifies a hardware component of the user computer. In contrast, Archibald's meter module is equipped with information for tracking program usage on the computers. The information includes authority IDs that indentify publishers of the programs, user IDs that identify computers and user accounts, and consumption IDs that identify particular usage of the programs. Although Archibald's meter module includes user IDs that identify computers and user accounts, Archibald's user IDs differ from claim 16's

fingerprint file. As recited in claim 16, the first fingerprint file includes "at least one identifying characteristic of at least one hardware component of the user computer." Archibald's user IDs does not include such information. Furthermore, Archibald's meter module does not receive user IDs from user computers. Instead, the meter module receives application information including an application ID and publisher ID. Based on the application and publisher IDs, the meter module looks-up User IDs in a local data store. Thus, Archibald does not teach or suggest claim 16's operation for receiving a fingerprint file.

The only way for the combination of Padgett, Archibald, and Klein to teach or suggest all the elements of claim 16 is for Klein to provide what the other references are lacking. However, Klein does not teach or suggest claim 16's receiving and comparing of fingerprint files. As noted above, Klein's method encrypts information on a local media device using an encryption key generated using a hardware identifier. However, Klein's method and hardware identifier are completely different from claim 16. First, in claim 16, the user identifier was generated based on the fingerprint file. However, Klein does not generate a user identifier based on its hardware identifier code. Instead, Klein creates an encryption key. Second, Klein's hardware identifier code is part of an encryption process local to a personal computer. Thus, Klein does not teach or suggest receiving a fingerprint file from a remotely located computer. Third, Klein's hardware identifier code is not used to verify, over a network, a computer involved in an electronic commerce transaction. Instead, Klein's hardware identifier code is used to create an encryption key used in encrypting locally stored data on a storage device.

Applicant also submits that the Office Action does not provide detailed reasoning about why one of ordinary skill in the art would combine or modify the teachings of Padgett, Archibald, and Klein. Archibald's system is designed to track remote software program use, not verify a computer and user, while Klein's system encrypts locally stored information. Padgett is related to verifying a document's source. Because each reference deals with different technical subject matter, it is unclear how one of ordinary skill would combine the systems to work together. Without such detailed reasoning, it appears the Examiner has engaged in an impermissible hindsight analysis.

Based on the foregoing discussion, Applicant submits that the combination of Padgett, Archibald, and Klein does not teach or suggest all the elements of claim. Thus, Applicant submits claim 16 is allowable over the cited references.

Claims 34-39 are rejected for similar reasons. Thus, Applicant submits that claims 34-39 are allowable for at least the reasons noted above.

Official Notice

The Office Action has taken Official Notice of certain facts. Applicant denies such facts are well-known and requests that the Examiner provide an affidavit or reference supporting such Official Notice.[4]

[4] See MPEP §2144.03

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney Andrew DeLizio at 281-758-0025 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. .

Respectfully submitted,

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